

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

JAMES SIMS

Respondent.

No. 02-039

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, James Sims, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

**Section 1: PROCEDURAL FACTS**

1.1. On March 11, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that James Sims, an employee of the State of Washington, Pollution Liability Insurance Agency (PLIA), violated the Ethics in Public Service Act when he: (1) used a state vehicle for personal errands; (2) used the state e-mail, computer, telephone system for personal use; (3) brought personal garbage to the agency for disposal; (4) provided meals during meetings at state expense; (5) allowed a former employee to solicit business on state facilities; (6) accepted baseball game tickets from an agency vendor; and (7) hired and supervised a PLIA employee that he lived with. The Executive Ethics Board reviewed this referral and issued a complaint on September 13, 2002.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. James Sims understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. James Sims recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Sims violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. James Sims waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge James Sims from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Mr. Sims in turn agrees to release and discharge the Board, its officers, agents and

employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between James Sims and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if James Sims does not accept the Board's proposed modification(s), if any, Mr. Sims waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Sims understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

## **Section 2: FINDINGS OF FACT**

2.1. At all times material hereto, the State of Washington, PLIA, employed James Sims as the PLIA Director. Mr. Sims resigned his position as the Director of PLIA effective January 1, 2002.

### **Personal Use of State Resources**

2.2. Mr. Sims used the agency's state-assigned vehicle for commuting and allowed other employees to use the vehicle for commuting.

2.3. A review of the computer hard drive, SCAN billing, cell phone billing, email and internet use of Mr. Sims revealed that Mr. Sims made personal use of state resources. Word processing files relating to outside organizations and other personal files were on his state computer. In an interview with the SAO, Mr. Sims admitted he used his state computer for personal use.

2.4. Cellular phone billing showed 42 percent of his calls were to his home. Mr. Sims asserts that he made these calls when he was going to be late due to work or traffic.

2.5. Mr. Sims brought in recyclable material from home, such as papers and magazines, to place in the recycle cans at the agency.

2.6. Mr. Sims allowed a former PLIA employee, who was working for a private insurance company selling insurance and other financial products, to schedule meetings with employees. The meetings, while held off PLIA premises and during non-work time, were scheduled on state premises during work hours.

2.7. Mr. Sims received reimbursement from the agency for coffee and light refreshments served at meetings and formal training sessions. The agency is drafting an agency policy pertaining to refreshments at such gatherings in accordance with SAAM 70.10.20(a). Mr. Sims agreed to reimburse the agency for the \$199.10 received for coffee and refreshments.

### Gifts

2.8. Beginning in October 1999 and continuing through October 2000, PLIA was involved in discussions regarding securing a vendor to audit environmental cleanups performed by other contractors. In November 1999, PLIA evaluated proposals from two vendors that specialized in environmental cleanup work. After evaluation, PLIA determined that KHM was the preferred provider of the services. On March 28, 2000, PLIA started reviewing the scope of work that KHM proposed to provide to PLIA.

2.9. KHM provided Seattle Mariners tickets to James Sims and the PLIA Deputy Director for a Seattle Mariners game on June 28, 2000. Mr. Sims and the Deputy Director attended the game using the tickets provided by KHM. Mr. Sims purchased the dinner and refreshments.

2.10. In October 2000, Mr. Sims approved the contract between PLIA and KHM.

2.11. The Deputy Director was assessed a \$1,000 civil penalty in EEB Case No. 02-038 for violating the Ethics Act when she accepted the tickets from the agency vendor.

### **Conflict of Interest**

2.12. Mr. Sims began a personal relationship with Ginny Ristine in 1990. In July 1995 Mr. Sims hired Ginny Ristine to an exempt position as one of the Co-Managers of the new Heating Oil Pollution Liability Insurance Program. Mr. Sims was Ms. Ristine's supervisor; he approved her leave and was responsible for her performance evaluations. Mr. Sims recommended and approved pay increases for Ms. Ristine. Ms. Ristine and Mr. Sims built a house together. They have a financial interest in each other.

### **Section 3: CONCLUSIONS OF LAW**

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over James Sims and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. The Ethics in Public Service act prohibits a state employee using state resources for his personal use. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.4. The Ethics in Public Service Act governs limitations on gifts under RCW 42.52.140.

This statute provides:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

3.5. Strict limitations on the receipt of gifts by officers and employees of a "regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters" are also set forth in RCW 42.52.150(4). The limit on gifts to state employees under this statute provides that they may receive only specifically designated items. Tickets to sporting events are not a gift that such an employee may receive or accept.

3.6. The Ethics in Public Service Act prohibits a state employee's use of his position to obtain special privileges for other persons. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.7. Based on Findings of Fact 2.2 through 2.13, James Sims violated RCW 42.52.020, RCW 42.52.030, RCW 42.52.070, RCW 42.52.140, RCW 42.52.150(4) and RCW 42.52.160.

3.8. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is an aggravating factor that James Sims was the Director of PLIA and had significant management responsibility.

#### **Section 4: AGREED ORDER**

4.1. James Sims will pay a civil penalty in the amount of five thousand dollars (\$5,000.00). The civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board

#### **CERTIFICATION**

I, James Sims, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntarily agree to this Stipulation.

*I do not agree with the stipulations and I believe the proposed penalty to be very unfair. It is obvious, however, that my opinions are of no concern, and that I have little choice but to agree.*

James Sims  
Respondent

Date

6-2-05

Stipulated to and presented by:

*Susan Harris*

Susan Harris

Date

Executive Director

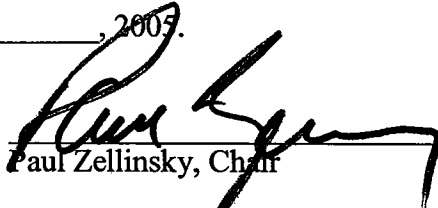
## II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

  X   ACCEPTED in its entirety;  
       REJECTED in its entirety;  
       MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves\* the following modification(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_


DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

  
Paul Zellinsky, Chair

  
Trish Akana, Vice Chair

  
Marilee Scarbrough, Member

\_\_\_\_\_  
Evelyn Yensen, Member

  
Judith Golberg, Member

\* I, James Sims, accept/do not accept (circle one) the proposed modification(s).

\_\_\_\_\_  
James Sims, Respondent

\_\_\_\_\_  
Date